
 King County	Department Policies and Procedures	General Department Policies & Procedures
Title Expert Services		Document Code No.
Department/Issuing Agency Department of Public Defense		Effective Date October 13, 2008
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1.0 PURPOSE:

To establish clear and uniform policies and procedures for applying for and processing requests for expert services.

2.0 APPLICABILITY:

Applicable to attorneys requesting expert services for their indigent clients.

3.0 REFERENCES:

- 3.1 Revised Code of Washington (RCW), Chapter 10.101
- 3.2 King County Code (KCC) 2.60
- 3.3 Criminal Rules (CrR) 3.1(f)
- 3.4 Local Criminal Rules (LCrR) 3.1(f)
- 3.5 King County Superior Court Criminal Department Manual Section 10

4.0 DEFINITIONS:

- 4.1 **Order:** Order Authorizing Expert Services at Public Expense
- 4.2 **Expert Authorization:** Expert Service Authorization and Request for Payment form

5.0 POLICIES:

5.1 General Provisions

- 5.1.1 The King County Department of Public Defense (DPD) may approve requests for payment of experts and investigators at public expense for indigent persons in criminal, juvenile, and mental illness. Requests in Involuntary Treatment Act (ITA) cases are approved by the ITA Commissioner.
- 5.1.2 Requests must be submitted to DPD prior to the expenditure of funds. DPD is not responsible for payment for services rendered before such approval, except as otherwise provided. If services begin prior to approval of authorization, payment for services rendered before approval may be authorized by the director or designee, if warranted, on a case by case basis.

5.2 Trial Judges' Authorizations

Trial judges can authorize expert services during a trial up to a maximum of \$250 per individual expert. Authorization for these services will be granted only if the urgency of the request is demonstrated. The judge's order authorizing expert services at public expense must be submitted to DPD.

5.3 Out of State Experts

If attorneys are requesting an out-of state service provider, they must explain which local experts/providers they have contacted and why those providers could not be used. If an out of area provider is requested, counsel must demonstrate that providers in neighboring states or provinces have been contacted before seeking an out-of-area provider.

5.4 Approval Process

DPD will review attorneys' requests as soon as possible. Additional information may be requested by phone or email. Attorneys' timely response will allow the processing of the request to be completed.

Allow at least five working days for DPD to approve the request. If attorneys believe their request is a rush, they should write RUSH and

include trial date on the front of the Order Authorizing Expert Services. Rush processing will be within three working days, where possible.

Supplemental Motions will be processed on a "rush" basis.

5.5 Notification of the Approval or Denial

DPD will email attorneys notification and will attach a scanned copy of the Order. DPD may approve the Order as requested, may approve but modify the Order, or may deny the Order. DPD will also email attorneys a copy of the Expert Service Authorization and Request for Payment form, which attorneys must return to DPD with the expert's invoice for payment.

DPD will not send attorneys either a scanned copy or a hard copy of any other documents submitted with the Order. Attorneys must retain a copy of their documents.

5.6 Appealing a Denial

If a request has been modified or denied, requests can be appealed to the Chief Criminal Judge or Chief MRJC Judge or resubmitted to DPD with additional information as a Motion for Reconsideration, together with a proposed Order Authorizing Expert Services at Public Expense.

To appeal the denial, submit the same request for *de novo* review to the Chief Criminal Judge or the Chief MRJC Judge, pursuant to *King County Superior Court Criminal Department Manual Section 10* and local criminal rules. Attach a copy of the DPD denial. If the judge approves the Order, counsel must furnish a copy of the Order to DPD. DPD will then issue an Expert Service Authorization and Request for Payment form, which will permit the authorization to be paid.

To seek reconsideration by DPD, submit a Motion for Reconsideration. Include all the information to be considered by DPD, including all documents previously submitted. Documents in the prior request will not be cross-referenced by DPD in considering the second request. Motions for Reconsideration will be processed by DPD on a "rush" basis. If the Motion for Reconsideration is denied by DPD, attorneys may appeal as above.

5.7 Cost Limitations

Expert payments are subject to the following guidelines, which can be exceeded only with justification set forth in the Motion and Certification.

- 5.7.1 Psychological or psychiatric evaluations (e.g. diminished capacity, or for sentencing). Not to exceed \$2,400.
- 5.7.2 Evaluations regarding competency or insanity. See Washington Administrative Code (WAC) 275-59, which establishes the Department of Social and Health Services (DSHS) reimbursable rate of \$800. DPD will not exceed an additional \$800.
- 5.7.3 Sexual deviancy evaluations. Not to exceed \$1,600, including polygraph.
- 5.7.4 Investigators. Attorney must provide DPD with a copy of the investigator's license if not on file.
 - a) Investigator fees are not to exceed \$30 per hour.
 - b) Attorneys should include the charge and brief investigative plan when requesting investigator funding, e.g. the number of civilian and police witnesses to be interviewed, other investigative tasks to be performed, and the amount of time reasonably anticipated to be necessary to accomplish these tasks.
 - c) When requesting investigator services in cases involving anticipated substantial amount of investigation, those requests should be made for 50 hours at a maximum per request (For homicide cases, a maximum of 100 hours per request may be requested). A supplemental request may be made upon or close to exhaustion of the previous request, identifying what investigation services have been done and what services are left to be done and the number of hours needed.
 - d) If it is necessary, due to exigent circumstances in a case, for an investigator to put in up to four hours of time before a funding request has been submitted, the investigator may document this time and include it on his/her invoice and timesheet for attorney review before signing the Affidavit approving payment for

investigator services. If approved by the attorney, this pre-authorization time up to four hours will be paid by DPD, if it is within the amount authorized.

- 5.7.5 Miscellaneous: fingerprinting, handwriting, voice identifications, and other experts; extraordinary case preparation costs. Not to exceed \$250.
- 5.7.6 Transcripts of court hearings and trials will be paid as expert expenses where necessary for subsequent proceedings. Transcription of witness interviews will generally not be paid for and will only be paid for if counsel demonstrates the clear necessity for such transcripts in light of anticipated trial testimony.
- 5.7.7 Material witness travel expenses can be requested by the expert request procedure. Counsel must attach a copy of the court's order finding the witness material. RCW 10.55.060 provides \$.10 per mile and \$5.00 per day witness fees (payable by the Court, not DPD). Depending on the actual cost of the material witness to appear and the ability of the witness to travel, appear at court and return home in the same day, DPD will consider a request for funds to cover the cost of the travel in excess of that provided by the court. If DPD is reimbursing the cost of travel, any amounts paid by the Court pursuant to RCW 10.55.060 for appearance of witness may be deducted from the reimbursement.
- 5.7.8 DPD Divisions will follow internal DPD procedure for ordering copies of medical and mental health records, with the exception of hospitals and other institutions which do not accept the P-card and are not King County Public Health. These exceptional copies must be requested by expert services request.

Assigned counsel must request medical and mental health costs by expert services request, if over \$100.

5.8 Expert Travel Expenses

Attorneys must submit requests for case-related travel expenses to DPD as an Order Authorizing Expert Services, using the forms and procedures as above. The request must include a proposed/pending travel itinerary including: dates necessary for travel by air, rail, auto; hotel needs; car

rental, if necessary, and an estimate of the total cost. Counsel should contact Passport Travel & Tours at the below email address/phone to get an estimate for air travel. When travel time for experts is requested, attorneys are encouraged to discuss with the expert prior to the request, the willingness of such expert to accept a reduced rate for travel time. Such travel rate should be noted in the request.

- 5.8.1 DPD will send approval to counsel and counsel should contact the travel agency to ask for issuance of the ticket. The travel agency will contact DPD. The travel agency sends an E-ticket pending notice to DPD and counsel. After DPD confirms approval, the travel agency issues the ticket. All tickets are purchased as non-reimbursable unless specifically approved by DPD.

Passport Travel & Tours
Marlene Stuteville
marlene@passport2travel.net
6270 NE Bothell Way
Kenmore, WA 98028
206-524-7448

- 5.8.2 Passport Travel & Tours can also book ground transportation, if these arrangements are necessary. Passport Travel & Tours does not book hotels.
- 5.8.3 Lodging, meals and mileage costs are reimbursable at the federal per diem rate (available at the following web site for per diem reimbursable rates: www.gsa.gov/perdiem). DPD does not reimburse for tips, alcohol, interest, or late charges. Receipts must be submitted with request for reimbursement.

5.9 Insufficient Authorized Amount

If the amount of compensation is anticipated to exceed the amount authorized, a second request following these same procedures must be submitted to authorize additional services before they are provided.

5.10 Missed Appointments

For missed appointments (e.g. polygraph), DPD will pay for the first appointment, but will not pay for a second appointment unless counsel can demonstrate good cause for the first missed appointment.

5.11 Privately Retained Attorneys with Indigent Clients

Occasionally a person other than the indigent defendant may retain and pay a private counsel to represent an indigent defendant. Pursuant to State v. Punsalan, 156 Wn.2d 875 (2006), private counsel may seek funding for expert services for their indigent defendant. In such cases, counsel shall follow the procedures outlined herein. In addition, counsel shall submit a copy of the retainer agreement, including agreements signed by defendant and any third party guarantors to said agreement. The defendant shall undergo DPD's screening process to establish indigency. In some cases, DPD will require the funding person to sign a promissory note to repay any funds provided for expert services. After expert services have been provided and invoiced, if the invoiced amount is less than the promissory note, counsel should contact Kathy.Gilman@kingcounty.gov to adjust the promissory note amount.

6.0 RESPONSIBILITIES:

6.1 Applying for Expert Services at Public Expense:

6.1.1 Attorneys must use the forms posted on the DPD website for the applicable Orders:

- Order Authorizing Expert Services at Public Expense
- Motion & Certification for Appointment of Expert
- Motion and Order to Seal Documents, CrR 3.1
- Motion and Protective Order for Expert Witness
- Order Appointing Independent Expert or Professional Person and Directing Payment to be Reimbursed by DSHS

6.1.2 Attorneys must attach a Motion and Certification for Appointment of Expert, which sets forth:

- the legal issue to be addressed and how the issue arises in the context of the facts of this specific case;
- a factual statement sufficient to establish the basis for the legal issue and detailed explanation to justify the use of an expert

under the circumstances of the case. (For psychological evaluations, specify the mental health/legal issue being assessed (i.e., competence, NGRI, or other specific issue) and include the observations and/or information which led attorneys to request this evaluation);

- the expert's credentials;
- the proposed scope of work;
- estimated hours;
- requested hourly rate;
- the customary rate for the expert and customary rate in King County; and,
- a copy of the Certification for Determination of Probable Cause. If a certification of probable cause is not available, please include an explanation.

For NGRI and competence evaluations counsel must submit 1) a proposed "Order Authorizing Expert Services at Public Expense", and 2) a proposed Order Appointing Independent Expert or Professional Person and Directing Payment to be Reimbursed by DSHS.

- 6.1.3 Submit the Motion and proposed Order by email as set forth below in Section 6.1.3.2. or bring or send by U.S. mail to the DPD office at:

King County Department of Public Defense
Chinook Building
401 Fifth Avenue, Suite 550
Seattle, WA 98104

- 6.1.3.1 DPD will not accept faxed expert order requests.

- 6.1.3.2 Attorneys may email the expert order request (order and motion and certification), to DPD using the following procedure:

- a) Send to OPDexpertservices@kingcounty.gov
(NOTE: Do not send inquiries regarding expert orders to this mailbox. Send any inquiries to DPD staff directly.)

b) Use PDF format.

c) An automatic confirmation of receipt will be sent by DPD. Do not reply to this automatic confirmation of receipt.

6.1.4 For all expert requests, which include a Motion and Order to Seal and/or a Motion and Protective Order for Expert Services, attorneys must email all documents to Superior Court Chief Criminal Judge at seacriminalmotions@kingcounty.gov, or the Chief Juvenile Judge bailiff (linda.tran@kingcounty.gov) in accordance with all the procedures set forth in the King County Superior Court Criminal Department Manual, Section 10.

6.1.4.1 The Court will rule on the Motion and Order to Seal and/or Motion and Protective Order for Expert Services. After the Court has approved on the Motion and Order to Seal and/or the Motion for Protective Order for Expert Services, the Court will email all the documents to DPD for review and processing. (However, if the Court denies the Order to Seal/Protective Order, the Court will email the denial to the attorney, who may choose to submit the request to DPD without sealing or to move the Court for reconsideration of the Motion to Seal/Protective Order.)

6.1.5 As noted above in Section 5.1.2, requests must be submitted prior to the expenditure of funds for expert services. Assigned counsel who continue to engage expert services which commence before authorization will be required to attend training and would be subject to termination from the assigned counsel panel. Division attorneys who continue to engage expert services which commence before authorization will be referred to their Division Director for appropriate action, including training.

6.2 Payment of Experts

DPD payment of experts is as follows:

6.2.1 DPD will send attorneys via email an "Expert Service Authorization and Request for Payment" form for each approved order.

- 6.2.2 Once services have been rendered and attorneys have received an invoice from the expert, they must sign and return hard copies of the "Expert Service Authorization and Request for Payment" form together with the invoice to DPD.
 - 6.2.2.1 Attorneys should review the expert invoices for accuracy of services provided and for accuracy of calculations of the amounts owed.
- 6.2.3 The DPD Legal Administrative Specialist (LAS) will confirm that the request does not exceed the approved amount. If the request includes work which appears to have been started prior to the authorization date but is within the authorized amount, the LAS will consult with the director or designee regarding whether DPD will authorize payment, e.g. pursuant to Section 5.1.2 above. The LAS will then process the billing for payment.
- 6.2.4 For inquiries concerning payment status, or for "Expert Service Authorization and Request for Payment" forms, attorneys may email Wendy Burk, DPD LAS at Wendy.Burk@kingcounty.gov. Please note that the LAS is not able to process requests for expert or attorney payments when the LAS is answering attorneys' phone calls.
- 6.2.5 Any questions regarding expert services for RCW 71.09 (sexually violent predator) cases must be addressed to the Washington State Office of Public Defense. See www.opd.wa.gov.
- 6.2.6 Requests for expert services and invoices from experts for King County District Court should be submitted to DPD.